

REMARKS

Applicants respectfully request entry of the amendments and reconsideration of the claims in light the present amendments.

Claims 17, 18, 20, 24, 31 and 33-43 are pending in the application.

Claims 9, 23, 25-30 and 32 have been cancelled by this amendment.

Claims 33-43 are have been added. No new matter has been added.

Claims 17 and 20 have been amended. No new matter has been added.

On August 29, 2008, the Examiner made a Final Rejection of claims 9, 17, 18, 20 and 23-32 as obvious over Mainfisch (USP 5,852,012) and The Agrochemical Handbook. The Examiner notes as follows:

The Applicants provide a declaration demonstrating unobvious results for the combination of abamectin and thiamethoxam. The Applicants present that the claims should be allowable in light of this data in the declaration.....Although the Examiner agrees Applicants have shown unexpected results for the combination of thiamethoxam plus abamectin, the Applicants have not shown unexpected results for the full scope of the claims with respect to the A compounds in the claims. For this reason, the rejection is maintained and made final.

Office Action, 8/29/08, p. 4.

On September 12, 2008, Applicants filed an After Final Amendment amending the A compounds to include only thiamethoxam.

On September 29, 2008, the Examiner mailed an Advisory Action stating the After Final Amendment failed to place the application in condition for allowance. The Examiner's reasoning was that the "Applicants declaration contains mixed data (synergistic and antagonist [sic])." The After Final Amendment was not entered.

Applicants have added new claim 33 and amended claim 17 to recite "...pests selected from the class Insecta..." Applicants note that that the species *Tetranychus urticae*, which data is provided for in Tables 2d and 2e is not a pest from the class Insecta. Accordingly, Applicants submit that the data presented in Table 2d and 2e is not relevant to claim 33 and claims dependent thereon.

Further Applicants added new claim 42 which recites, "A composition for controlling pests comprising a synergistically effect amount of thiamethoxam and abamectin"

Applicants have attached hereto, the Declaration of Leslie Fuquay which presents the adjusted mortality of Table 2c based on a water and check having a 12 % mortality. Applicants respectfully submit the increased Corrected Factor is further evidence of the unexpectedness of the combination. Applicants reproduce the Factor and Corrected Factor from the Fuquay Declaration below:

Factor (F/E)	Corrected Factor (F/E)
0.74	1.04
0.87	2.00
0.59	0.60
0.87	#DIV/0!
0.96	#DIV/0!
0.79	#DIV/0!
1.29	16.00
2.25	33.00
1.44	2.21
1.26	1.38
1.83	9.33
1.39	2.06
1.12	1.20
1.00	1.00
1.05	1.48
1.22	1.33
1.00	1.00
1.21	1.31
0.98	0.98

Applicants note that “#DIV/0!” is presented where the Expected Value = 0, and the Found Value was greater than zero.

In view of the present claims, Applicants respectfully submit that the data presented in the declaration of Elke Hillesheim provides the requisite evidence to rebut the Examiner’s *prime facie* case of obviousness. Applicants respectfully submit that the comparative data taken as whole found in Tables 2a- 2c provides for evidence of unexpectedness.

In light of the amendments and arguments set forth above, Applicants respectfully request reconsideration and allowance of all of the pending claims.

The Commissioner is hereby authorized to charge any additional fees under 37 CFR §1.17 which may be required, or credit any overpayment, to Account No. 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

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Date: February 27, 2009